

1 HONORABLE BENJAMIN H. SETTLE  
2  
3  
4  
5  
6  
7

8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 JOHN LENNARTSON, RITA ANDREWS,  
12 CASSIE ASLESON, SUSAN SHAY NOHR,  
13 on behalf of themselves and all others similarly  
14 situated,

15 Plaintiffs,  
16 v.  
17 PAPA MURPHY'S HOLDINGS, INC.; and  
18 PAPA MURPHY'S INTERNATIONAL,  
19 L.L.C.,  
20 Defendants.

21 **AMENDED FINAL  
22 ORDER APPROVING CLASS  
23 ACTION SETTLEMENT**

24 This matter came before the Court on September 28, 2018, on Plaintiffs' Motion for Final  
25 Approval of Class Action Settlement (ECF Nos. 224). Based on the parties' briefing and records  
26 and proceedings herein, IT IS HEREBY ORDERED:

1. The Motion for Final Approval of Settlement (ECF No. 224) is GRANTED.

2. This Order incorporates by reference the definitions in the Settlement Agreement,  
3 and all terms used herein shall have the same meanings as set forth in the Settlement Agreement  
4 unless set forth differently in this Order. The terms of this Court's Order Preliminarily  
5 Approving Class Action Settlement are also incorporated by reference in this Order.

6 3. This putative class action against Defendants commenced on May 7, 2015.  
7 Plaintiffs allege, on behalf of themselves and a similarly situated class, that Defendants sent

8 [PROPOSED] AMENDED FINAL ORDER APPROVING CLASS  
9 ACTION SETTLEMENT (15-CV-05307-RBL) - 1

10 **KELLER ROHRBACK L.L.P.**  
11 1201 Third Avenue, Suite 3200  
12 Seattle, Washington 98101-3032  
13 TELEPHONE: (206) 623-1900  
14 FAXSIMILE: (206) 623-3384

1 Plaintiffs and Class Members text messages in violation of the Telephone Consumer Protection  
 2 Act, 47 U.S.C. § 227, Washington Commercial Electronic Mail Act, and Washington Consumer  
 3 Protection Act.

4 4. The following Settlement Class was conditionally certified for settlement  
 5 purposes in this Court's Order Preliminarily Approving Class Action Settlement:

6 All persons or entities in the United States and its Territories who received one or  
 7 more text message advertisements from or on behalf of Papa Murphy's between  
 October 16, 2013, and June 15, 2015.

8 5. The Court has jurisdiction over the subject matter of this Action and all Parties to  
 9 the Action, including all Settlement Class Members, including, without limitation, jurisdiction to  
 10 approve the proposed Settlement, grant final certification of the Settlement Class, and dismiss  
 11 this action with prejudice.

12 6. The Court finds that, for purposes of approving and effectuating the Settlement  
 13 embodied in the Settlement Agreement, and only for such purposes, the prerequisites for  
 14 certifying this Action as a class action under Federal Rule of Civil Procedure 23(a) and (b)(3)  
 15 have been met, in that: (a) the members of the Settlement Class are so numerous that joinder of  
 16 all individual Settlement Class Members is impracticable; (b) there are questions of law and fact  
 17 common to the Settlement Class, which questions predominate over individual questions; (c) the  
 18 claims of the Class Representatives are typical of the Settlement Class Members; (d) the Class  
 19 Representatives and Class Counsel have fairly and adequately represented the interests of the  
 20 Settlement Class and will continue to do so; and (e) a class action is superior to other available  
 21 methods for the fair and efficient adjudication of the issues relating to the Settlement.

22 7. The Claims Administrator has received four (4) requests for exclusion. (See  
 23 Declaration of Tim Cunningham, of CPT Group, Inc., Claims Administrator, in Support of  
 24 Plaintiffs' Motion for Final Approval of Class Action Settlement ("Cunningham Decl."), ¶ 18.  
 25 The Court hereby finds that two (2) of the requests for exclusion are deficient because the  
 26 requests were submitted via email rather than U.S. mail (Danette Sandoval and Paul J. Miller)

1 and one (1) is deficient because the request is from a non-class member (Christopher Akinyemi).  
2 A total of one (1) Settlement Class Member submitted a timely and proper Request for Exclusion  
3 (Rishi Chopra). The Court hereby orders that Rishi Chopra is excluded from the Settlement  
4 Class. That individual will not be bound by the Agreement, and neither will that individual be  
5 entitled to the Cash Award. That individual will not be bound by this Order and final judgment  
6 or the releases herein.

7 8. The Claims Administrator has received five (5) potential requests for objection.  
8 (See Cunningham Decl., ¶ 19.) The Court finds that Patrick S. Sweeney is not a member of the  
9 Settlement Class and his request for objection is hereby stricken. The Court also overrules all of  
10 the potential requests for objection.

11 9. The Class Representatives appointed in this Court's Order Preliminarily  
12 Approving Class Action Settlement (John Lennartson, Rita Andrews, Cassie Asleson, and Susan  
13 Shay Nohr) have fairly and adequately represented the Settlement Class throughout the  
14 proceedings and are hereby finally confirmed and appointed as Class Representatives.

15 10. Having considered the factors set forth in Federal Rule of Civil Procedure  
16 23(g)(1), the Court finds that Class Counsel (Mark Griffin and Karin Swope of Keller Rohrback  
17 L.L.P. and June Hoidal and Behdad Sadeghi of Zimmerman Reed LLP) have fairly and  
18 adequately represented the Settlement Class throughout the proceedings and for purposes of  
19 entering into and implementing the Settlement, and thus hereby reiterates the appointment of  
20 Class Counsel as Class Counsel to represent the Settlement Class.

21 11. Pursuant to Federal Rule of Civil Procedure 23(c)(2) and (e), the Class Notice  
22 provided to the Settlement Class constitutes the best and most practicable notice under the  
23 circumstances. The Notice Program was designed to provide notice in the manner most likely to  
24 be received and read by Settlement Class Members. The Settlement Class received valid, due,  
25 and sufficient notice that complied fully with Federal Rule of Civil Procedure 23 and the  
26 constitutional requirements of due process.

1       12. The Court hereby finds and concludes that the notice provided by the Claims  
2 Administrator to the appropriate state and federal officials pursuant to 28 U.S.C. § 1715 fully  
3 satisfied the requirements of that statute.

4       13. Pursuant to Federal Rule of Civil Procedure 23(e)(2), the Court finds, after a  
5 hearing and based upon all submissions of the Parties and interested persons, that the Settlement  
6 proposed by the Parties is fair, reasonable, and adequate. The terms and provisions of the  
7 Agreement are the product of lengthy, arm's-length negotiations. Approval of the Settlement will  
8 result in substantial savings of time, money, and effort to the Court and the Parties, and will  
9 further the interests of justice. The Court hereby finally approves the Agreement, the exhibits,  
10 and the Settlement contemplated thereby, and directs its consummation pursuant to its terms and  
11 conditions.

12       14. All Settlement Class Members who have not been excluded above are bound by  
13 this Order, the accompanying Final Judgment, and by the terms and provisions of the Settlement  
14 Agreement incorporated herein.

15       15. The Court hereby dismisses the Action, as defined in the Agreement, with  
16 prejudice, without costs to any party, except as awarded in the Court's September 6, 2018 Order  
17 (ECF No. 223).

18       16. The Plaintiffs and each and every one of the Settlement Class Members  
19 unconditionally, fully, and finally release and forever discharge the Released Parties from the  
20 Released Claims.

21       17. Each and every Settlement Class Member, and any person actually or purportedly  
22 acting on behalf of any Settlement Class Member(s), is hereby permanently barred and enjoined  
23 from initiating, asserting, or prosecuting Released Claims or any claims released under this  
24 Agreement against the Released Parties as set forth in Section 12 of the Settlement Agreement.  
25 This permanent bar and injunction is necessary to protect and effectuate the Agreement, this  
26 Order, and this Court's authority to effectuate the Agreement, and is ordered in aid of this

1 Court's jurisdiction and to protect its judgments.

2       18. The Agreement (including, without limitation, its exhibits), and any and all  
3 negotiations, documents, and discussions associated with it, this Order and the final judgment, or  
4 the fact of the Settlement shall not in any event be construed as, offered in evidence as, received  
5 in evidence as, and/or deemed to be, evidence of a presumption, concession, or an admission of  
6 liability, fault or wrongdoing, or in any way referred to for any other reason, by any Class  
7 Representative, Settlement Class Member, Defendants, or Released Party in the Action or in any  
8 other civil, criminal, or administrative action or proceeding, except for purposes of enforcing the  
9 provisions of the Agreement, this Order, and the final judgment. Without affecting the finality of  
10 the judgment, the Court, under the Court's contempt power, retains exclusive jurisdiction over  
11 this Action and thus all Defendants, Plaintiffs, and Settlement Class Members in this Action  
12 regarding the Settlement including without limitation the Settlement Agreement and this Order.  
13 Defendants, Plaintiffs, and Settlement Class Members in this Action are hereby deemed to have  
14 submitted irrevocably to the exclusive jurisdiction of this Court for any suit, action, proceeding,  
15 or dispute arising out of or relating to the Released Claims, this Order, or the Settlement  
16 Agreement, including but not limited to the applicability of the Released Claims, the Settlement  
17 Agreement, or this Order.

18       19. No opinions concerning the tax consequences of the Settlement to Settlement  
19 Class Members have been given, and no representations or warranties regarding such tax  
20 consequences are made in the Agreement. The Parties and their respective counsel shall not be  
21 liable to any party or person for any tax consequences that result from the implementation of this  
22 Settlement. Settlement Class Members must consult their own tax advisors regarding the tax  
23 consequences of the Settlement, including any payments or credits provided or relief awarded  
24 under the Settlement and any tax reporting obligations with respect to it.

25       20. The Court reserves jurisdiction over the interpretations, administration,  
26 implementation, effectuation, and enforcement of this Order, the final judgment, the Agreement,

1 and all other matters that the Court may deem ancillary thereto. Nothing in this Order or the final  
2 judgment shall preclude any action to enforce the terms of the Agreement; nor shall anything in  
3 this Order or the final judgment preclude Plaintiffs or Settlement Class Members from  
4 participating in the claims process described in the Settlement Agreement if they are entitled to  
5 do so under the terms of the Settlement Agreement.

6 21. The Parties and their counsel are hereby directed to implement the Settlement  
7 Agreement according to its terms and provisions.

8 22. The Claims Administrator has received seven thousand seven hundred eleven  
9 (7,711) potential claims. (See Cunningham Decl., ¶ 17.) Of these claims, the Claims  
10 Administrator has determined that one hundred twenty-eight (128) were late and that three  
11 hundred sixty-seven (367) are deficient because they are from non-class members. After filing  
12 the Cunningham Declaration, the Claims Administrator received claims from seventy-four (74)  
13 additional Class Members. This means that the total of late claims reported by the Claims  
14 Administrator is two hundred two (202). (See Supplemental Declaration of Tim Cunningham, of  
15 CPT Group, Inc., Claims Administrator, in Support of Plaintiffs' Motion for Final Approval of  
16 Class Action Settlement, ¶ 3. The Court hereby finds that the claims from non-class members  
17 are not Valid Claims for purposes of distributing Cash Awards. Because the parties have agreed,  
18 the Court hereby finds that the 202 late claims are Valid Claims for purposes of distributing Cash  
19 Awards. The Court hereby orders that the Valid Claims, and any other claims subsequently  
20 determined to be timely and valid by the Claims Administrator pursuant to the terms set forth in  
21 the Settlement Agreement, be treated as Valid Claims for purposes of distributing Cash Awards.

22 23. By incorporating the Agreement's terms herein, the Court determines that this  
Order complies in all respects with Federal Rule of Civil Procedure 65(d)(1).

24 25. The Court will separately enter a final judgment in accordance with Federal Rule  
of Civil Procedure 58.

26 It is so ORDERED.

1 Dated this 28 day of September, 2018.  
2  
3



4  
5 Benjamin H. Settle  
6 United States District Judge  
7  
8

9 Presented by and approved as to content and form:  
10 KELLER ROHRBACK L.L.P.  
11

12 By: s/Mark A. Griffin

13 Mark A. Griffin, WSBA #16296  
14 Karin B. Swope, WSBA #24015  
15 1201 Third Avenue, Suite 3200  
16 Seattle, WA 98101  
17 Tel: (206) 623-1900  
18 Fax: (206) 623-3384  
19 mgriffin@kellerrohrback.com  
20 kswope@kellerrohrback.com

21 ZIMMERMAN REED, LLP  
22 June P. Hoidal (Pro Hac Vice)  
23 Behdad C. Sadeghi (Pro Hac Vice)  
24 1100 IDS Center  
25 80 South 8th Street  
26 Minneapolis, MN 55402  
27 Tel: (612) 341-0400  
28 Fax: (612)341-0844  
29 June.Hoidal@zimmreed.com  
30 Behdad.Sadeghi@zimmreed.com  
31 *Attorneys for Plaintiffs*

32  
33 Approved as to content and form:  
34 DLA PIPER LLP (US)

35 By: s/Jeffrey DeGroot

36 Anthony Todaro, WSBA No. 30391  
37 Jeffrey DeGroot, WSBA No. 46839  
38 701 Fifth Avenue, Suite 7000  
39 Seattle, WA 98104-7044  
40 Tel: (206) 839-4800  
41 Fax: (206) 839-4801  
42 anthony.todaro@dlapiper.com  
43 jeffrey.degroot@dlapiper.com  
44 *Attorneys for Defendants*

45 [PROPOSED] AMENDED FINAL ORDER APPROVING CLASS  
46 ACTION SETTLEMENT (15-CV-05307-RBL) - 7

47 KELLER ROHRBACK L.L.P.

48 1201 Third Avenue, Suite 3200  
49 Seattle, Washington 98101-3052  
50 TELEPHONE: (206) 623-1900  
51 FACSIMILE: (206) 623-3384